



D-1108

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
David T. Frederick)	
Serial No.: 09/288,685)	Art Unit 3653
Confirmation No.: 7773)	
Filed: April 9, 1999)	Patent Examiner
)	Jeffrey Shapiro
Title: Medical Cabinet With)	
Adjustable Drawers)	

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**2nd SUPPLEMENTAL BRIEF OF APPELLANT
PURSUANT TO 37 C.F.R. § 1.192**

Sir:

The Appellant hereby respectfully requests reinstatement of the appeal pursuant to 37 C.F.R. § 1.193(b)(2). The Appellant hereby submits the Second Supplemental Appeal Brief pursuant to 37 C.F.R. § 1.192, in triplicate, concerning the above-referenced Application.

REAL PARTY IN INTEREST

The Assignee of all right, title and interest to the above-referenced Application is MedSelect, Inc., a Delaware corporation.

RELATED APPEALS AND INTERFERENCES

Appellant believes that there are no related appeals or interferences pertaining to this matter.

STATUS OF CLAIMS

Claims 1-56 are pending in the Application.

Claims 20-28 were rejected pursuant to 35 U.S.C. § 112, second paragraph.

Claims 1-38 and 40-56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bach, et al. (US 5,378,057) in view of Gardner, et al. (US 5,392,951). Hereinafter "Bach" and "Gardner".

Claim 39 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Bach in view of Gardner and further in view of Hingham (sic), et al. (US 5,905,653) (hereinafter "Higham").

These rejections were the only rejections presented in the Office Action ("Action") dated January 8, 2004. Appellant continues to appeal the rejection of claims 1 through 56, inclusive.

STATUS OF AMENDMENTS

No final rejection is pending. Prosecution has been reopened following the grant of a petition to the Deputy Commissioner that resulted in withdrawal of the holding of abandonment. Therefore, no amendments to the claims were requested to be admitted after a final rejection.

Appellant acknowledges the Office's inferred admission that all of the previously appealed rejections (including the nine obviousness-type double patenting rejections) have been withdrawn because of arguments presented by Appellant. As shown in more detail herein, Appellant's claims are also allowable over the pending new grounds of rejection. Thus, Appellant respectfully requests reinstatement of the appeal pursuant to 37 C.F.R. § 1.193(b)(2).

Overview of dates and papers associated with this application

1. 04/09/99 Initial filing
2. 08/17/00 Office Action (first non final) rejection
3. 11/10/00 Response by Appellant (successfully traversing the rejection)
4. 02/12/01 Office Action, first restriction requirement
5. 03/01/01 Response by Appellant (successfully traversing the first restriction)
6. 05/22/01 Office Action, second (different) restriction requirement
7. 06/04/01 Response by Appellant (successfully traversing the second restriction)
8. 07/17/01 Office Action (second non final) rejection
9. 10/17/01 Notice of Appeal
10. 12/17/01 Appeal Brief
11. 03/05/02 Notice of defective Appeal Brief

12. 03/14/02 Resubmitted Appeal Brief
13. 05/03/02 Petition to Withdraw Holding of Noncompliance
14. 07/11/02 Notice of defective Appeal Brief
15. 08/28/02 Petition to Withdraw Holding of Noncompliance
16. 03/21/03 Decision on Petitions -- Denied
17. 05/13/03 Petition to Review a Decision of a Technology Center Director
18. 10/31/03 Decision on Petition -- Granted
19. 01/08/04 Office Action (third non final) rejection

SUMMARY OF INVENTION

Overview of the Invention

An exemplary form of the invention is directed to a medical item storage cabinet. The cabinet has adjustable drawers and/or shelves.

Figure 57 shows an exemplary cabinet (550) including a top (552), a bottom (554), side walls (556, 557), and a back wall (558). The cabinet also has a front opening (567). The side walls (556, 557) have a plurality of openings or apertures (560) therein. The cabinet (550) is constructed with a double-wall construction having outer walls (582, 584) overlying the side walls (556, 557). As shown in Figure 59, a space (586) extends between the side walls and outer walls.

In the exemplary embodiment, a first series (562) of openings are elongated in a horizontal direction and are arranged with a predetermined spacing both horizontally and

vertically on the interior side walls (556, 557) of the cabinet. The series (562) of openings includes a first row vertically spaced and aligned adjacent the front opening (567) and a second row of vertically aligned and spaced adjacent the back wall (558) of the cabinet. It should be understood that in alternative embodiments other arrangements may be used.

In the exemplary embodiment the plurality of openings (560) further include a second series (564) of openings. The openings in the second series are elongated in a vertical direction. The second series (564) is arranged with a predetermined spacing both horizontally and vertically to complement the first series (562).

Adjacent openings in the first and second series (562, 564) can be generally perpendicular slots that may form an L-shape as shown in Figures 57 and 58. Each pair of adjacent openings from the first series and the second series comprises a set (588) as shown in Figure 58. A pair of complementary sets comprise an arrangement (590) as shown in Figure 57 by a dashed line. The plurality of arrangements (590) are spaced in each side wall (556, 557) to complement each other and be arranged at generally the same vertical elevation. It should again be understood that other arrangements may be used in alternative embodiments.

In the exemplary embodiment each arrangement of apertures is adapted to engage a releasable connective member, such as a bracket (566) as shown in Figure 56. A bracket (566) may be attached in operative connection with an item supporting member, such as a drawer guide (574) as shown in phantom in Figure 56. The bracket (566) may be a substantially flat elongated member including a tab or projection (568) at each end. The tabs (568) extend outwards from one side of the bracket in a first direction. The tabs also extend substantially at a right angle to

the main body of the bracket. The bracket (566) further includes finger projections (570). The finger projections are also at each end and have a portion which extends in a second direction away from the upper edge and away from a tab.

As shown in Figure 59 the projections (570) are bent in an S-shape and extend in the first direction like the tabs (568). The projections (570) include an inner portion (592) which extends in generally the first direction. The inner portion (592) extends generally horizontally through a corresponding horizontally elongated aperture (594). The projection (570) also includes an end portion (596). The end portion (596) extends in a second direction generally transverse to the first direction and away from a tab projection (568). In this way when the bracket (566) is in an operative position, the end portion (596) may extend generally vertically in the space (586) between the interior side wall (557) and the outer wall (584). The end portion (596) can secure the bracket (566) to prevent horizontal movement thereof when the bracket is in the operative position.

The installation of the bracket (566) in operative supporting connection with the wall (557) can be accomplished by first extending the end portion (596) in a generally horizontal direction and passing it through an aperture (594). Once the end portion passes through the aperture the bracket (566) may be rotated such that the end portion (596) moves toward the vertical position and the inner portion (592) of finger projection (570) extends in the aperture (594). As the bracket (566) is rotated, the tab projection (568) is moved to extend into an aperture (598) which is part of a set with the aperture (594). The engagement of tab projection (568) in the aperture (598) can provide vertical support for the bracket (566).

In the exemplary embodiment, each bracket (566) includes two finger projections (570) and a pair of tab projections (568). A medical item supporting member such as a drawer (628) or shelf (626) (e.g., Figure 63), may be extended across the interior area of the cabinet supported by the brackets. With the adjacent drawer or shelf removed, the brackets can be readily disengaged and vertically repositioned in other apertures. This enables readily installing and/or changing the positions, arrangements, and types of shelves and drawers within the cabinet.

CONCISE STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The questions presented in this appeal are:

- 1). Whether Appellant's claims 20-28 are unpatentable under 35 U.S.C. § 112, second paragraph.
- 2). Whether Appellant's claims 1-38 and 40-56 are unpatentable under 35 U.S.C. § 103(a) over Bach in view of Gardner.
- 3). Whether Appellant's claim 39 is unpatentable under 35 U.S.C. § 103(a) over Bach in view of Gardner and further in view of Higham.

GROUPING OF CLAIMS

No groups of claims stand or fall together. Reasons are provided in the Argument section herein. The arguments presented hereafter provide reasons why each of the claims is separately patentable. Appellant presents for each respective separate claim a corresponding respective

separate argument as to why the claim is patentable over the rejection applied thereto. Reasons are provided how each claim recites additional features of the invention which distinguishes the claim over every other pending claim. Reasons are further provided how each of the claims recites at least one element, combination of elements, or step not found or suggested in the applied references, which patentably distinguishes each claim.

The pending claims include six independent claims (claims 1, 29, 40, 41, 44, and 53). Claims 2-28 depend from claim 40. Claims 30-39 and 42-43 depend from claim 41. Claims 45-52 depend from claim 44. Claims 54-56 depend from claim 53. All pending claims 1-56 are reproduced in the Appendix.

ARGUMENT

The Applicable Legal Standards

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. This is known as *prima facie* obviousness. To establish *prima facie* obviousness, it must be shown that all the elements and relationships recited in the claim are known in the prior art. If the Office does not produce a *prima facie* case, then the Appellant is under no obligation to submit evidence of nonobviousness. MPEP § 2142 (Eighth Edition, August 2001; Rev. 1, Feb. 2003).

The teaching, suggestion, or motivation to combine the features in prior art references must be clearly and particularly identified in such prior art to support a rejection on the basis of

obviousness. It is not sufficient to offer a broad range of sources and make conclusory statements. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Even if all of the features recited in the claim are known in the prior art, it is still not proper to reject a claim on the basis of obviousness unless there is a specific teaching, suggestion, or motivation in the prior art to produce the claimed combination. *Panduit Corp. v. Denison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593 (Fed. Cir. 1987). *In re Newell*, 891 F.2d 899, 901, 902, 13 USPQ2d 1248, 1250 (Fed. Cir. 1989).

The evidence of record must teach or suggest the recited features. An assertion of basic knowledge and common sense not based on any evidence in the record lacks substantial evidence support. *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001).

A determination of patentability must be based on evidence of record. *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

It is respectfully submitted that the Action from which this appeal is taken does not meet these burdens.

The Bach Reference

Bach is directed to an office filing cabinet (col. 1, lines 12-24). The cabinet (20) can include an inner framework (120) comprised of a plurality of corrugated metal panels (122, 124, 126), each having a similar cross-sectional configuration and substantially extending the depth and length of the case. The panels are arranged horizontally and vertically to form a box-like structure which may be encased in a one-piece, metal outer wrapper (80) and finished

with a top pan (40) and a base pan (60), thereby concealing spot welds which partially secure the inner framework to the outer wrapper. The inner framework is further secured to the outer wrapper by adhesive, which also provides acoustical insulation. The vertical panels (126) include equidistantly placed, symmetrically arranged openings (170) which may accommodate either self-locating, snap-in door hinges (240) for a storage cabinet with shelves (230) embodiment or unhanded, snap-in drawer glides (200) for a lateral file embodiment.

The Gardner Reference

Gardner is directed to a mechanical system for opening a selected drawer in a multiple-drawer cabinet. A selected drawer (80) is unlatched by moving a finger (89) of a rod (88) to engage a latch (82) in a column of drawers (Figure 4). When the rod (88) moves longitudinally, the selected drawer (80) becomes unlatched. An unlatched drawer can open only to a distance determined by a cable (1) which unwinds from a drum (27) and passes around a pulley (19, 21, 23, 25) attached to the drawer (Figure 1). A computer can control the opening of the drawers. The computer can keep a record of which drawer compartments have been emptied.

The Higham Reference

Higham is directed to dispensing items from a dispensing unit (10, 28). The unit comprises a processor (22) and an enclosure (12) having drawers (32). Some drawers (212) can include bins (216) for holding items (col. 24, lines 48-60; Figure 11). The bins have lids (218) equipped with a sensor that communicates with a processor to indicate when a lid is lifted (col.

25, lines 58-66). The processor includes a record of the items held within each drawer and which items may be accessed by specific users.

(ii) 35 U.S.C. § 112, Second Paragraph

Claims 20-28 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Action alleges indefiniteness because method claims 20-21 and 24 each refer to an apparatus claim. Of the remaining claims, claims 22-23 depend from claim 21 and claims 25-28 depend from claim 24.

These rejections are respectfully traversed. Appellant respectfully submits that the claims are not indefinite. The reason for rejection does not constitute a valid basis for rejection pursuant to 35 U.S.C. § 112, second paragraph. *Ex parte Porter*, 25 USPQ2d 1144 (Bd. Pat. App. & Inter. 1992). MPEP § 2173.05(f). Thus, Appellant respectfully requests that the rejections be withdrawn.

(iv) 35 U.S.C. § 103

Appellant traverses the rejections on the grounds that the claims recite features, relationships, and/or steps which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion, or motivation cited so as to produce Appellant's invention. Appellant's claims patentably distinguish over the applied references.

Appellant respectfully submits that none of the applied references, taken alone or in combination, teach or suggest the features and relationships that are specifically recited in the claims. The Office does not factually support any *prima facie* conclusion of obviousness. Nor would it have been obvious to one having ordinary skill in the art to have combined the references as alleged. Nor would the combined reference teachings (if somehow possible) have resulted in the recited invention.

The Appellant further respectfully submits that the attempts to combine the teachings of the references are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible and does not constitute a valid basis for a finding of obviousness. *In re Fritch*, 22 USPQ2d 1780 (Fed. Cir. 1992). The rejections, which lack the necessary evidence and rationale, are based on knowledge gleaned only from Appellant's disclosure.

Without a proper motivation to combine, which is the current situation, a rejection allegedly based on a *prima facie* case of obviousness is improper (MPEP § 2143.01). It would not have been obvious to one having ordinary skill in the art to have modified the references in the manner alleged to have produced the recited invention. Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections are improper and should be withdrawn.

Additionally, the Action does not clearly state, in any way that is reasonably understandable by Appellant, where the specific features recited in Appellant's claims are allegedly found in the references. MPEP § 707.07(d) states that “where a claim is refused for any reason relating to the merits thereof it should be rejected and the ground of rejection fully and clearly stated.” It is not sufficient to make conclusory statements. *In re Dembiczak*, *supra*. The

Action's reliance on disjointed numerals is incomprehensible, and is indicative that there is no valid, legally supportable basis for the rejections.

If the Office does not produce a *prima facie* case, which is the current situation, then the Appellant is under no obligation to submit evidence of nonobviousness (MPEP § 2142). It would not have been obvious to one having ordinary skill in the art to have modified the references in the manner alleged to have produced the recited invention. Thus, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections are improper and should be withdrawn.

**The Pending Claims Are Not Obvious Over
Bach in view of Gardner**

Claims 1-38 and 40-56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bach in view of Gardner. These rejections are respectfully traversed.

As best understood, the Action relies on Bach for teaching a supporting structure (20); wall (126); first aperture (172, 176, 178, 182); second aperture (174, 180); connecting member (202); first projection (214); and second projection (220). Also, as best understood, the Action (beginning on page 7) relies on Gardner only for the rejections claims 20-28 and 38.

Claim 1

An exemplary form of the invention has been described in the Summary of Invention section. To facilitate even further understanding, an exemplary embodiment of the invention described with regard to claim 1 is shown below. The reference numerals used correspond to the embodiment presented. Of course, it should be understood that these reference numerals are for

demonstration purposes only and that claim 1 is not limited to the embodiment (nor the reference numerals) presented. Claim 1 can read on other embodiments. No unnecessary claim limitations are to be implied, and claim 1 is to remain broadly construed.

An apparatus comprising:

a supporting structure (550) including a generally vertically extending wall (556), the wall including at least two sets (588) of generally horizontally disposed apertures therein, wherein each set (588) of apertures includes a first aperture (562) and a second aperture (564), wherein the first aperture (562) is disposed vertically above the second aperture (564); and

a releasible connecting member (566), wherein the connecting member in an operative position extends substantially between the sets (588) of apertures (562, 564) and in releasible supporting connection with the wall (556), wherein the releasible connecting member (566) is adapted for supporting items (e.g., medical items) in operative connection therewith, wherein the releasible connecting member (566) includes two disposed pairs of projecting portions (568, 570) corresponding to the sets (588) of apertures (562, 564), and wherein each pair of projecting portions includes a first projection (570) and a second projection (568), and wherein in the operative position of the connecting member (566) the first projection (570) extends in a first aperture (562) and the second projection (568) extends in a second aperture (564), and wherein in cross section the second projection (568) extends from the connecting member (566) in generally a first direction (Figure 59), and wherein the first projection (570) includes an inner portion (592), wherein the inner portion (592) extends from the connecting member (566) in generally the first direction, and wherein the first projection (570) includes an end portion (596),

wherein the end portion extends generally transverse to the first direction and away from the second projection (568), and wherein the connecting member (566) is placed in supporting connection with the wall (556) by extending the end portions (596) of the first projections (570) in the first apertures (562) of the sets (588) and then rotating the connecting member (566) relative to the wall (556) to the operative position wherein the inner portions (592) extend in the first apertures (562) and the second projections (568) extend in the second apertures (564).

Bach does not teach or suggest two pairs of first and second projections

Bach does not teach or suggest two disposed pairs of first and second projections corresponding to two sets of apertures in the manner recited. As shown in Figure 12, Bach's rail (202) (the alleged connecting member) consists of upper tab (214), lower tab (216), cross-shaped tab (218), and clip (220). Even if Bach's tab (214) somehow constituted a recited first projection and Bach's clip (220) somehow constituted a recited second projection as alleged, the alleged connecting member (202) would still only have one pair of first and second projections (214, 220). However, claim 1 recites that the connecting member includes two pairs. It is unclear how only the alleged first (214) and second (220) projections can constitute two pairs (i.e., at least four) of projections. Where does Bach teach or suggest the alleged connecting member (202) having two pairs of the alleged first (214) and second (220) projections? The Office has not established a *prima facie* showing of obviousness.

The Action acknowledges this structural deficiency in Bach. The Action (on page 3) asserts that "although Applicant's releasable connecting member has two sets of tabs (568) and (570), it appears to be a functional equivalent of Bach's rail and tabs." The Action (on page 6)

further asserts that "Although Applicant's bracket has a vertical elongated tab and a horizontal elongated tab on either end of the bracket, the tabs (218) on the other side of Bach's bracket/drawer glide (202) are considered to be functional equivalents to Applicant's structure."

However, a drawer glide (202) in Bach does not have tabs (218) as alleged. Rather, as previously discussed, each drawer glide (202) has a single cross-shaped tab (218). It is unclear how structure that does not exist in Bach can be a "functional equivalent" to Appellant's recited structure. The assertions in the Action are not based on any evidence in the record. *In re Zurko*, supra. *In re Lee*, supra. Again, Bach does not teach or suggest two pairs of first and second projections.

Furthermore, Bach teaches that the drawer glide (200) is configured so that it can be used on the right and left side panels (126) simply by inverting and flipping, thereby eliminating the need for a right-handed glide and a left-handed glide (col. 8, lines 35-40). The configuration enables the drawer guide (200) to be "snapped" into openings (170) in a side panel (126) (col. 10, lines 34-49). The configuration enables the tab (218) to be first inserted into a slot, then tabs (214, 216) can be inserted into slots (col. 10, lines 39-42). Bach has no need of a different tab configuration. Nor has the Office identified any motivation in the prior art to modify Bach's configuration. It follows that the attempts to modify Bach are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible and does not constitute a valid basis for a finding of obviousness. *In re Fritch*, supra.

Additionally, any modification to Bach's tab configuration would appear to prevent the order of drawer guide insertion (col. 10, lines 39-42) specifically desired by Bach. Thus, the

Action's alleged modification to Bach would destroy Bach's explicitly taught structure and operation. That is, the modification to Bach alleged in the Action would render the reference inoperable for its intended purpose. However, an obviousness rejection cannot be based on a modification if making the modification would result in destroying the utility of the device shown in the prior art reference, which is the current situation. Note *In re Fine*, 5 USPQ2d 1598-99 (Fed. Cir. 1988).

The Office has not established a *prima facie* showing of obviousness. One having ordinary skill in the art would not have found it obvious to have modified Bach as alleged, especially to have produced the recited invention.

Bach does not teach or suggest the inner portion and end portion relationship

The Action alleges that Bach teaches a first projection (214) and a second projection (220). However, the alleged first projection (214) in Bach does not have an inner portion and end portion in the manner recited.

Claim 1 recites that the second projection extends from the connecting member in generally a first direction. The first projection includes an inner portion and an end portion. The inner portion also extends from the connecting member in generally the first direction. The end portion extends generally transverse to the first direction and away from the second projection.

Bach does not teach or suggest an end portion of the alleged first projection (214) that extends generally transverse to a first direction and away from the alleged second projection (220), especially where a first projection (214) inner portion and the second projection (220) both

extend from the alleged connecting member (202) in the first direction. The Office has not established a *prima facie* showing of obviousness.

The Action also acknowledges this structural deficiency in Bach. The Action (on page 5) refers to "tab (220) with an end portion including inner portion." However, the Action relies on Bach's clip (220) as the second projection (Action page 3). In claim 1 it is the "first" projection which includes the inner portion and end portion. Nevertheless, the clip (220) would not extend away from the other projection (214).

The Action (on page 6) also asserts that "Applicant's inner portion (592) of projection (570) with end portion (596) . . . is . . . functionally equivalent to Bach's configuration as illustrated in figures 8, 9, 11, 15 and 21." However, it is unclear how structure that does not exist in Bach can be a "functional equivalent" to recited structure. The assertions in the Action are not based on any evidence in the record. *In re Zurko*, supra. *In re Lee*, supra. Nor has the Office identified any motivation in the prior art to modify Bach's configuration. Again, the attempts to modify Bach are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible. It follows that Bach does not teach or suggest the first and second projections, recited in Appellant's claim 1, especially where the first projection includes an inner portion and an end portion in the manner recited.

As previously discussed, Bach does not teach or suggest two pairs of first and second projections (i.e., two first projections and two second projections). As previously discussed, Bach also does not teach or suggest first projections that each include an inner portion and an end portion in the manner recited. It follows that Bach cannot teach or suggest a connecting member

with "end portions of the first projections." The Office has not established a *prima facie* showing of obviousness.

Bach does not teach or suggest the supporting structure and connecting member relationship

Nor does Bach teach or suggest the ability to place a connecting member in supporting connection with a wall by extending the end portions of first projections in first apertures of sets, and then rotating the connecting member relative to the wall to the operative position such that inner portions extend in the first apertures and second projections extend in second apertures.

As previously discussed, Bach does not teach or suggest the recited first projection end portion. Because Bach does not teach or suggest the end portion structure, the alleged connecting member (202) in Bach cannot be placed in supporting connection with a wall in the manner recited. That is, the alleged connecting member (202) cannot be positioned so that first projection end portions extend into first apertures, and then rotated so that first projection inner portions extend in the first apertures and the second projections extend in the second apertures.

Bach does not teach or suggest rotating the alleged connecting member (202). Nor does Bach teach or suggest a connecting member structure adapted to permit supporting connection by rotation, especially with the alleged first projection (214) and second projection (220). As previously discussed, Bach's drawer guide (200) is "snapped" into openings (170) in a side panel (126) (col. 10, lines 34-49). The tab (218) is first inserted into a slot, then tabs (214, 216) are inserted into slots (col. 10, lines 39-42). Bach does not teach or suggest the recited supporting structure/ connecting member relationship. The Office has not established a *prima facie* showing

of obviousness. Nor would it have been obvious to one having ordinary skill in the art to have modified Bach as alleged to have produced the recited invention.

Gardner does not teach or suggest the recited features which are not found in Bach

As previously discussed, the Action does not rely on Gardner for the rejection of claim 1. Nevertheless, Gardner cannot alleviate the admitted and previously discussed deficiencies of Bach as it does not teach or suggest the recited features which are not found in Bach. The references, taken alone or in combination, do not teach or suggest the recited apparatus. The Office has not established a *prima facie* showing of obviousness. It would not have been obvious to one having ordinary skill in the art to have modified Bach in view of Gardner as alleged to have produced the claimed invention. Thus, Appellant respectfully submits that the 35 U.S.C. § 103(a) rejection of claim 1 should be withdrawn.

Claim 29

Claim 29 is an independent claim directed to an apparatus. Note Appellant's remarks in support of the patentability of claim 1.

Bach does not teach or suggest a drawer guide in operatively fixed connection with a bracket. Bach has a drawer glide (200) with telescoping rails (202, 204, 206) and ball bearings (col. 7, line 63 to col. 8, line 2). The drawer glide rail (202) includes tabs (214, 216, 218) and a clip (220) (col. 8, lines 14-24). Claim 29 recites drawer glides and brackets. Bach does not teach or suggest a bracket.

The Action acknowledges this structural deficiency in Bach. The Action (on page 5, last paragraph) asserts that "Applicant's drawer glide (574) may be construed to be one piece with the

bracket (566), which would be equivalent to Bach's rail (202), which acts as its own bracket."

The Appellant respectfully disagrees. Bach's drawer glide rail (202) cannot constitute both a recited drawer guide and a recited bracket, especially where "each drawer guide is in operatively fixed connection with a corresponding one of said brackets." How can a one-piece element be in fixed connection with itself? The assertions in the Action are not based on any evidence in the record. *In re Zurko*, supra. *In re Lee*, supra. Nor has the Office identified any motivation in the prior art to modify Bach's configuration. Again, the attempts to modify Bach are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible.

Nor does Bach teach or suggest a drawer guide in operatively fixed connection with a bracket. Nor does Bach teach or suggest a bracket having a substantially flat elongated member. Nor does Bach teach or suggest an elongated member having a tab portion adjacent each longitudinal end. Even if Bach's tabs (214, 216) were somehow part of a bracket, they would only be adjacent one end. Nor does Bach teach or suggest an elongated member having a finger portion adjacent an upper edge thereof. Bach's tabs are positioned about a horizontal centerline (col. 8, lines 31-35). Nor does Bach teach or suggest having each tab portion (adjacent each longitudinal end) extending in the (same) first direction, and a finger portion (adjacent an upper edge) extending generally transverse to the first direction. Even if Bach's tab (216) somehow constituted a tab portion and the tab (214) somehow constituted a finger portion, the tabs (214, 216) would not extend in different directions. Bach's tabs (214, 216) are identical and extend in the same direction. Bach does not teach or suggest the recited structure.

The Action does not rely on Gardner for the rejection of claim 29. Nevertheless, Gardner cannot alleviate the admitted and previously discussed deficiencies of Bach as it does not teach or suggest the recited features which are not found in Bach. It follows that the references, taken alone or in combination, do not teach or suggest the recited apparatus. It would not have been obvious to one having ordinary skill in the art to have modified Bach in view of Gardner as alleged to have produced the claimed invention. Thus, Appellant respectfully submits that the 35 U.S.C. § 103(a) rejection of claim 29 should be withdrawn.

Claim 40

Claim 40 is an independent claim directed to an apparatus. Note Appellant's remarks in support of the patentability of claim 1. As previously discussed, Bach does not teach or suggest two disposed pairs of first and second projections (i.e., two first projections and two second projections), especially where each respective first projection extends in a respective first aperture and each respective second projection extends in a respective second aperture. The Action (on page 3) alleges that Bach has first (214) and second (220) projections. However, as evidenced by Figure 12, Bach does not have pairs of the alleged first (214) and second (220) projections. At best, Bach has only one pair of first (214) and second (220) projections. It is unclear how two projections (214, 220) can constitute two pairs (i.e., at least four) of projections. It follows that Bach's alleged first (214) and second (220) projections do not match pairs of first and second apertures in the manner recited.

Nor does Bach teach or suggest the recited first projection inner portions, first projection end portions, and second projections relationships, including first and generally transverse

directions, as previously discussed. Where does Bach teach or suggest that each first projection includes an inner portion that extends from the connecting member in generally the same (first) direction that each second projection extends from the connecting member, and that each first projection includes an end portion that extends generally transverse to the first direction and away from the second projections?

The Action does not rely on Gardner for the rejection of claim 40. Nevertheless, Gardner cannot alleviate the admitted and previously discussed deficiencies of Bach as it does not teach or suggest the recited features which are not found in Bach. As previously discussed (e.g., claim 1 remarks), Bach has no need of a different tab configuration. Nor has the Office identified any motivation in the prior art to modify Bach's configuration. It follows that the references, taken alone or in combination, do not teach or suggest the recited apparatus. The Office has not established a *prima facie* showing of obviousness.

It would not have been obvious to one having ordinary skill in the art to have modified Bach in view of Gardner as alleged to have produced the claimed invention. Thus, Appellant respectfully submits that the 35 U.S.C. § 103(a) rejection of claim 40 should be withdrawn.

Claim 2

Claim 2 depends from claim 40. As previously discussed, the combined references do not teach or suggest the recited first projection end portion (e.g., 596; Figure 59). It follows that the references further do not teach or suggest the end portion and a connecting member body extending on opposed sides of a vertically extending wall. The Office has not established a *prima facie* showing of obviousness.

Claim 3

Claim 3 depends from claim 2. The combined references further do not teach or suggest a first projection end portion extending in a space between a vertically extending wall and an outer wall. The Office has not established a *prima facie* showing of obviousness.

Claim 4

Claim 4 depends from claim 40. The combined references further do not teach or suggest a connecting member selectively vertically positionable to engage any arrangement comprising a horizontally disposed pair of sets of apertures. In an exemplary embodiment of the invention a pair of horizontally disposed sets (588) comprise an arrangement (590) as indicated in Figure 57 by a dashed line (Specification page 75, lines 1-10). The Office has not established a *prima facie* showing of obviousness.

Claim 5

Claim 5 depends from claim 40. The combined references further do not teach or suggest the recited relationship of a connecting member and a moveable item supporting member in the manner recited. Hence, the Office has not established a *prima facie* showing of obviousness.

Claim 6

Claim 6 depends from claim 5. The combined references further do not teach or suggest an apparatus with a moveable item supporting member in the manner recited. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 7

Claim 7 depends from claim 4. The combined references further do not teach or suggest the recited structural relationships of a first wall, second wall, corresponding arrangements of apertures, a first connecting member, a second connecting member, and an item supporting member in the manner recited. A *prima facie* showing of obviousness has not been established.

Claim 8

Claim 8 depends from claim 7. The combined references further do not teach or suggest an apparatus with a moveable item supporting member in the manner recited. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 9

Claim 9 depends from claim 8. The combined references further do not teach or suggest a plurality of item supporting members, each independently moveably mounted in the manner recited. It follows that the Office has not established a *prima facie* showing of obviousness.

Claim 10

Claim 10 depends from claim 8. The combined references do not teach or suggest the previously recited structure of claim 8/7/4/40. It follows that the references cannot teach or suggest the item supporting member drawer of claim 10.

Claim 11

Claim 11 depends from claim 8. The combined references do not teach or suggest a shelf in the manner recited. Bach's shelf (230) does not correspond to the recited item supporting member. Where is Bach's shelf (230) in supporting connection with first and second connecting

members, especially where the connecting members include two disposed pairs of first and second projections? Bach uses a different support arrangement for a shelf (230). Bach has trim panels (234) with ports (236) for the apparent direct attachment of a shelf (230) thereto (col. 8, lines 41-46). The shelf (230) has no need for connecting members. Gardner cannot alleviate the discussed deficiencies of Bach as it does not teach or suggest the recited features which are not found in Bach. Again, the Office has not established a *prima facie* showing of obviousness.

In an exemplary embodiment of the invention, different supporting structure for a shelf (as is needed in Bach) is not required. For example, note both a shelf (626) and a drawer (628) in Appellant's Figure 63.

Claim 12

Claim 12 depends from claim 9. As previously discussed, the combined references do not teach or suggest the recited relationships involving the first and second arrangements of apertures and the first and second connecting members. It follows that the references cannot teach or suggest the recited vertically spaced supporting members.

Claim 13

Claim 13 depends from claim 9. The combined references do not teach or suggest that a second vertical distance (related to the spacing of first and second arrangements of apertures) is smaller than a first vertical distance (related to spacing of item supporting members). The Office has not established a *prima facie* showing of obviousness. For example, Appellant's Figures 57 and 62-63 show arrangements (590) of apertures (Figure 57) spaced smaller than the spacing of item supporting members (e.g., drawers; Figures 62-63).

Claim 14

Claim 14 depends from claim 40. The Action (on pages 3-4) alleges that Bach has a first aperture (172, 176, 178, 182) and a first projection (214). However, as evidenced by Bach's Figures 15 and 17, the alleged first projection (214) does not extend into and substantially fill the alleged first aperture (176). Gardner cannot alleviate the deficiencies of Bach as it does not teach or suggest the recited features which are not found in Bach. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 15

Claim 15 depends from claim 40. The Action (on pages 3-4) alleges that Bach has a second aperture (174, 180) and a second projection (220). However, the alleged second aperture (174) cannot constitute a second aperture because it does not receive the alleged second projection (220). Appellant questions whether the alleged second aperture (180) is elongated vertically. Nevertheless, the alleged second projection (220) is not elongated vertically, but horizontally. It follows that the alleged second projection (220) projection cannot extend in and substantially fill the alleged vertically elongated second aperture (180). Gardner cannot alleviate the deficiencies of Bach as it does not teach or suggest the recited features which are not found in Bach. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 16

Claim 16 depends from claim 40. As previously discussed (e.g., claims 14 and 15), the combined references do not teach or suggest the first aperture/second projection configuration (claim 14) or the second aperture/second projection configuration (claim 15). It follows that the

references cannot teach or suggest both of the configurations. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 17

Claim 17 depends from claim 40. As previously discussed, the combined references do not teach or suggest the recited sets of apertures. It follows that the references cannot teach or suggest each set including a first aperture disposed vertically from the second aperture (claim 40) and the second aperture disposed horizontally from the first aperture (claim 17). The Office has not established a *prima facie* showing of obviousness.

Claim 18

Claim 18 depends from claim 17. As previously discussed, the combined references do not teach or suggest the recited pair of sets of apertures. Each set includes a first aperture disposed vertically from the second aperture (claim 40) and the second aperture disposed horizontally from the first aperture (claim 17). Furthermore, the second apertures in the pair of sets are spaced further apart horizontally than the first apertures in the pair of sets. As evidenced by Bach's Figure 15, the alleged second apertures (180) are not spaced further apart horizontally than the alleged first apertures (176). The alleged second apertures (180) are actually closer together. The Office has not established a *prima facie* showing of obviousness.

Claim 19

Claim 19 depends from claim 7. As previously discussed, the combined references do not teach or suggest the recited connecting members to walls relationship. It follows that the references do not teach or suggest having each connecting member configured to be engageable

in the operative position with either wall. It further follows that Bach does not anticipate the claim. A *prima facie* showing of obviousness has not been established.

Claim 20

Claim 20 depends from claim 19/7/4/40. The Action is silent as to where the applied references disclose or suggest the recited method. The Action (on page 9) merely alleges that since the apparatus of Bach is functionally equivalent, it would have been obvious to practice its use in the method recited. The Appellant respectfully disagrees. The Office cannot rely on an alleged functional equivalence of structure in Bach as a basis for obvious use in a recited method. That is, the Office cannot rely merely on (alleged) structure in meeting the steps of a recited method. Bach neither teaches nor suggests the recited structure of claim 19, nor the removing and installing steps of claim 20.

Gardner cannot alleviate the noted deficiencies of Bach. It follows that the applied references, taken alone or in combination, neither teach nor suggest the recited features, relationships, and steps. The Office has not established a *prima facie* showing of obviousness. Therefore, it would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

Claim 21

Claim 21 depends from claim 19/7/4/40. The Action is silent as to where the applied references disclose or suggest the recited features and relationships. Again, the rejection merely relies on the alleged functional equivalence of Bach as a basis for obvious use in the recited method. However, as previously discussed, Bach does not teach or suggest the recited structure

of claim 19. Therefore, Bach cannot be relied upon to teach or suggest the recited method of removing a connecting member from a wall in claim 21. It follows that the applied references, taken alone or in combination, neither disclose nor suggest the recited features and relationships. Thus, the Office has not established a *prima facie* showing of obviousness.

Claim 22

Claim 22 depends from claim 21. The combined references further do not teach or suggest removing a connecting member from a wall (claim 21) and reinstalling a connecting member with a wall (claim 22). Again, the Office has not established a *prima facie* showing of obviousness.

Claim 23

Claim 23 depends from claim 22 which depends from claim 21. As previously discussed, the references, taken alone or in combination, neither teach nor suggest the recited features, relationships, and steps of claims 22 or 21. Additionally, the combined references do not teach or suggest reinstalling a connecting member with a different arrangement of apertures in a wall. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 24

Claim 24 depends from claim 19/7/4/40. The Action is silent as to where the applied references disclose or suggest the recited features, relationships, and steps. Again, the Office cannot rely on alleged functionality of alleged structure in Bach as a basis for teaching or suggesting the recited steps, such as removing a connecting member from a wall. The applied

references, taken alone or in combination, neither teach nor suggest the recited steps. The Office has not established a *prima facie* showing of obviousness.

Claim 25

Claim 25 depends from claim 24. The combined references further do not teach or suggest the placing of medical items with the recited item supporting member structure. It would not have been obvious to one having ordinary skill in the art to have combined the references as alleged to have produced the claimed invention.

Claim 26

Claim 26 depends from claim 24/19/7/4/40. Where does Gardner teach or suggest a locking mechanism as alleged? Where does Gardner prevent an operator from opening and accessing items in a drawer? Nevertheless, the combined references are devoid of any such teaching, suggestion, or motivation for installing the alleged locking mechanism of Gardner in the office filing cabinet of Bach. The attempts to modify Bach's office filing cabinet are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible. It would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

Claim 27

Claim 27 depends from claim 26. Neither of the applied references, taken alone or in combination, teach or suggest removing a locking mechanism. The Office has not established a *prima facie* showing of obviousness.

Claim 28

Claim 28 depends from claim 26. Neither of the applied references, taken alone or in combination, teach nor suggest relating a predetermined input to causing a locking mechanism to provide access to a selected first medical item in the manner recited.

Bach discloses an office filing cabinet. There is no indication that the filing cabinet is capable, intended, or authorized for securely storing medical items in a locked manner. The references are devoid of any such teaching, suggestion, or motivation for modifying Bach's office filing cabinet with a locking mechanism. The attempt to modify Bach with the recited locking mechanism is based on knowledge gleaned only from Appellant's disclosure. The attempt to modify Bach is clearly an attempt at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 41

Claim 41 is an independent claim directed to an apparatus. Note Appellant's remarks in support of the patentability of claims 1 and 29.

As previously discussed (e.g., claim 29 remarks), Bach does not teach or suggest the recited features. Bach does not teach or suggest a bracket. Nor does Bach teach or suggest the recited pair of brackets, each including a substantially flat elongated member having tab portions and finger portions. For example, Appellant's Figure 56 shows a bracket (566) with tabs (568) and fingers (570).

Nor does Bach teach or suggest a bracket member having tab portions and finger portions (i.e., at least four projections). Even the Action (on page 3) refers to Bach as only having a first projection (214) and a second projection (220). It is unclear how the alleged single pair (214, 220) of projections can constitute at least four projections (tab portions and finger portions).

Nor does Bach teach or suggest a bracket member having tab portions adjacent each longitudinal end of the elongated member, and the tab portions extend in a first direction. Nor does Bach teach or suggest finger portions adjacent an edge of the elongated member, where each finger portion includes a projection, and the finger portion projections extend generally transverse to the first direction. Bach does not teach or suggest the recited tab portions and finger portions. Nor does Bach teach or suggest side wall openings spaced and configured to receive the bracket finger portions and tab portions.

The Action (on page 5) alleges that Bach has tabs (214, 220). However, as evidenced by Figure 12, Bach does not have a bracket with tabs at each end. The drawer glide rail (202) in Figure 12 lacks tabs at the right end thereof, especially the relied upon tabs (214, 220).

As previously discussed (e.g., claim 1 remarks), Bach has no need of a different tab configuration. Nor has the Office identified any motivation in the prior art to modify Bach's configuration. It follows that the attempts to modify Bach are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible. *In re Fritch*, supra. Additionally, any modification to Bach's tab configuration would appear to prevent the order of drawer guide insertion specifically desired by Bach, which would result in destroying the disclosed utility of Bach's device. *In re Fine*, 5 USPQ2d 1598-99 (Fed. Cir. 1988).

The Action does not rely on Gardner for the rejection of claim 41. Nevertheless, Gardner cannot alleviate the admitted and previously discussed deficiencies of Bach as it does not teach or suggest the recited features which are not found in Bach. It follows that the references, taken alone or in combination, do not teach or suggest the recited apparatus. The Office has not established a *prima facie* showing of obviousness. One having ordinary skill in the art would not have found it obvious to have modified Bach as alleged, especially to have produced the recited invention. Thus, Appellant respectfully submits that the 35 U.S.C. § 103(a) rejection of claim 41 should be withdrawn.

Claim 30

Claim 30 depends from claim 41. The combined references further do not teach or suggest a series of horizontally aligned and vertically spaced openings in each side wall, especially where recited bracket finger portions and tab portions are releasibly engageable in the openings. For example, Appellant's Figures 56, 57, and 59 show a series of vertically spaced openings (562), wherein a finger portion (570) is releasibly engageable in each of the openings of a first series. The Office has not established a *prima facie* showing of obviousness.

Claim 31

Claim 31 depends from claim 30. The combined references further do not teach or suggest a tab portion adjacent each longitudinal end (claim 41) and a finger portion adjacent each longitudinal end (claim 31). The Office has not established a *prima facie* showing of obviousness.

Claim 32

Claim 32 depends from claim 30. The combined references further do not teach or suggest the recited structural arrangement of openings in a cabinet wall. Nor do the references teach or suggest the openings having a size to receive a finger portion of a bracket in the manner recited. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 33

Claim 33 depends from claim 30. The combined references further do not teach or suggest a first series of openings vertically spaced on each side wall, especially where the openings are capable of having a bracket finger portion engageable in each of the first series openings (claim 30), nor a second series of openings vertically spaced on each side wall, especially where a bracket tab portion is releasibly engageable in each of the second series openings (claim 33). Thus, a *prima facie* showing of obviousness has not been established.

Claim 34

Claim 34 depends from claim 33. The combined references further do not teach or suggest a second series of openings (including in each side wall) one row of vertically spaced openings and a second row of vertically spaced openings, especially where the openings in the first row are horizontally disposed from the openings in the second row. The references do not teach or suggest the recited first and second series of openings. It follows that the Office has not established a *prima facie* showing of obviousness.

Claim 35

Claim 35 depends from claim 34. The combined references further do not teach or suggest the recited structural arrangement of openings in a cabinet wall. Nor do the references teach or suggest the recited openings having a size to receive a tab portion of a bracket. The Office has not established a *prima facie* showing of obviousness.

Claim 36

Claim 36 depends from claim 41. The combined references further do not teach or suggest a cabinet including an outer wall in the manner recited. Nor do the references teach or suggest that a finger portion extends in the space between a side wall and the outer wall. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 37

Claim 37 depends from claim 41. The combined references further do not teach or suggest each cabinet bracket including a tab portion adjacent each longitudinal end, and finger portions adjacent an edge (claim 41). It follows that the references, taken alone or in combination, cannot teach or suggest a door moveably mounted in supporting connection with the cabinet in the manner recited. Thus, it would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

Claim 38

Claim 38 depends from claim 37. Note Appellant's remarks in support of the patentability of claim 26. Gardner does not teach or suggest a lock module in the manner recited. Nevertheless, the combined references are devoid of any such teaching, suggestion, or motivation

for modifying Bach with the alleged lock module of Gardner. The attempts to modify Bach are clearly attempts at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible. It would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the recited invention.

Claim 42

Claim 42 depends from claim 41. As previously discussed, the references do not teach or suggest the recited bracket tab portions and finger portions. Nor do the references teach or suggest a second distance (of finger outer edges) greater than a first distance (of tab outer edges). The Office has not established a *prima facie* showing of obviousness.

Claim 43

Claim 43 depends from claim 42. The combined references further do not teach or suggest a bracket having fingers extend from a bracket edge a greater distance than tab portions extend from the bracket side. In Bach the elements (214, 220) extend from the same surface of the glide rail (202). Where does Bach teach or suggest fingers extending from a bracket edge and tabs extending from a bracket side? As previously discussed (e.g., claim 29 and 41 remarks), Bach does not even teach or suggest a bracket. Gardner cannot alleviate the noted deficiencies of Bach. The Office has not established a *prima facie* showing of obviousness. It would not have been obvious to one having ordinary skill in the art to have combined the references to have produced the claimed invention.

Claim 44

Claim 44 is an independent claim directed to an apparatus. Note Appellant's remarks in support of the patentability of claims 1 and 29. Bach does not teach or suggest each side wall including a plurality of first and second pairs of apertures. Appellant's Figure 57 shows an example of first pairs (562) and second pairs (564). Bach does not teach or suggest a support simultaneously engageable with a first pair aperture (wherein the apertures in each first pair are disposed from and aligned with one another in a horizontal direction) and a second pair aperture (wherein the apertures in each second pair are disposed from and aligned with one another in the horizontal direction).

Nor does Bach teach or suggest a medical item cabinet and a medical item supporting structure. Bach is non analogous art. Anticipation by inherency requires that the Patent Office establish that persons skilled in the art would recognize that the missing element is necessarily present in the reference. To establish inherency the Office must prove through citation to prior art that the (medical item) feature alleged to be inherent is "necessarily present" in Bach. Inherency may not be established based on probabilities or possibilities (which is the current situation). *In re Robertson*, supra. The Action has not proved inherency. Where does Bach implicitly or explicitly refer to housing and supporting structure for medical items? The record lacks the required substantial evidence support. *In re Zurko*, supra. *In re Lee*, supra.

Contrarily, Bach discloses an office filing cabinet. There is no indication that the filing cabinet is capable, intended, or authorized for housing medical items. The references are devoid of any such teaching, suggestion, or motivation for modifying Bach's office filing cabinet to

house medical items. The attempt to modify Bach is based on knowledge gleaned only from Appellant's disclosure. The attempt to modify Bach is clearly an attempt at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible.

The Action does not rely on Gardner for the rejection of claim 44. Nevertheless, Gardner cannot alleviate the admitted and previously discussed deficiencies of Bach as it does not teach or suggest the recited structural features which are not found in Bach. It follows that the references, taken alone or in combination, do not teach or suggest the recited apparatus. The Office has not established a *prima facie* showing of obviousness. One having ordinary skill in the art would not have found it obvious to have modified Bach as alleged to have produced the recited invention. Thus, Appellant respectfully submits that the 35 U.S.C. § 103(a) rejection of claim 44 should be withdrawn.

Claim 45

Claim 45 depends from claim 44. The combined references further do not teach or suggest apertures (in each first pair) disposed from and aligned with one another in a horizontal direction (claim 44) and elongated in the horizontal direction (claim 45) in the manner recited. The Office has not established a *prima facie* showing of obviousness.

Claim 46

Claim 46 depends from claim 44. The combined references further do not teach or suggest apertures (in each second pair) disposed from and aligned with one another in a horizontal direction (claim 44) and are vertically elongated (claim 46) in the manner recited. The Office has not established a *prima facie* showing of obviousness.

Claim 47

Claim 47 depends from claim 45. As previously discussed, the combined references further do not teach or suggest each first pair apertures being horizontally elongated and disposed from and aligned with one another in a horizontal direction (claim 45), and each second pair apertures being vertically elongated (claim 47). The references do not teach or suggest horizontally and vertically elongated apertures in the manner recited. The Office has not established a *prima facie* showing of obviousness.

Claim 48

Claim 48 depends from claim 44. The combined references further do not teach or suggest a pair of slides in the manner recited. It follows that the Office has not established a *prima facie* showing of obviousness. Appellant's Figure 56 shows an example of a slide (574).

Claim 49

Claim 49 depends from claim 44. The combined references further do not teach or suggest a plurality of medical item supporting structures selectively vertically positionable in the interior area of the cabinet (claim 44). The Office has not established a *prima facie* showing of obviousness.

Claim 50

Claim 50 depends from claim 49. Again, the references are devoid of any such teaching, suggestion, or motivation for modifying Bach's office filing cabinet to house medical items, especially with a medical item supporting drawer. It would not have been obvious to one having ordinary skill in the art to have modified Bach as alleged to have produced the recited invention.

Claim 51

Claim 51 depends from claim 44. Again, the references are devoid of any such teaching, suggestion, or motivation for modifying Bach's office filing cabinet to house medical items, especially with a medical item supporting shelf. It would not have been obvious to one having ordinary skill in the art to have modified Bach as alleged to have produced the recited invention.

Claim 52

Claim 52 depends from claim 50. Again, the references are devoid of any such teaching, suggestion, or motivation for modifying Bach's office filing cabinet to house medical items, especially with a medical item supporting drawer and a medical item supporting shelf. It would not have been obvious to one having ordinary skill in the art to have modified Bach as alleged to have produced the recited invention.

Claim 53

Claim 53 is an independent claim directed to an apparatus. Note Appellant's remarks in support of the patentability of claim 44.

Bach does not teach or suggest a plurality of medical item supporting structures releasibly supported and selectively vertically positionable in the interior area of a medical item cabinet, with each medical item supporting structure in supporting connection with both of the cabinet side walls through engagement of a plurality of projections and apertures. Further, as previously discussed, the Office has not proved that the (medical item) feature is "necessarily present" in Bach. Bach does not implicitly or explicitly teach or suggest medical item supporting structures.

Contrarily, Bach discloses an office filing cabinet. There is no indication that the filing cabinet is capable, intended, or authorized for housing medical items. The references are devoid of any such teaching, suggestion, or motivation for modifying Bach's office filing cabinet to house medical items. The attempt to modify Bach is based on knowledge gleaned only from Appellant's disclosure. The attempt to modify Bach is clearly an attempt at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible.

The Action does not rely on Gardner for the rejection of claim 53. Nevertheless, Gardner cannot alleviate the admitted and previously discussed deficiencies of Bach as it does not teach or suggest the recited structural features which are not found in Bach. It follows that the references, taken alone or in combination, do not teach or suggest the recited apparatus. One having ordinary skill in the art would not have found it obvious to have modified Bach as alleged to have produced the recited invention. Thus, Appellant respectfully submits that the 35 U.S.C. § 103(a) rejection of claim 53 should be withdrawn.

Claim 54

Claim 54 depends from claim 53. The combined references further do not teach or suggest that each side wall set (of apertures or projections) is vertically disposed from and parallel to at least one other side wall set in the manner recited. Thus, the Office has not established a *prima facie* showing of obviousness.

Claim 55

Claim 55 depends from claim 54. The combined references further do not teach or suggest that each set comprises a pair of apertures, and a pair of projections is engaged in the pair

of apertures in the manner recited. Again, the Office has not established a *prima facie* showing of obviousness.

Claim 56

Claim 56 depends from claim 54. The combined references further do not teach or suggest the recited aperture features and arrangements. As previously discussed, the references do not teach or suggest the recited first and second pairs of apertures, including horizontally elongated first pair apertures and vertically elongated second pair apertures. The Office has not established a *prima facie* showing of obviousness.

The Pending Claims Are Not Obvious Over Bach in view of Gardner and Higham

Claim 39 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Bach in view of Gardner and Higham. This rejection is respectfully traversed.

Claim 39

Claim 39 depends from claim 38/37/41. The Action admits that Bach/Gardner does not teach or suggest the recited computer and data store.

Bach discloses an office filing cabinet. There is no indication that the filing cabinet is capable, intended, or authorized for securely storing medical items in a locked manner. The references are devoid of any such teaching, suggestion, or motivation for modifying Bach with a lock module, computer, and data store. The attempt to modify Bach with the recited lock module, computer, and data store is based on knowledge gleaned only from Appellant's

disclosure. The attempt to modify Bach's office filing cabinet is clearly an attempt at hindsight reconstruction of Appellant's claimed invention, which is legally impermissible.

Where does Higham teach or suggest a data store that includes data representative of a storage location within a cabinet? The Action's relies on Higham at Abstract lines 9-11, which state "Further, the processor includes a record of the items held within each drawer and which items may be accessed by specific users or user types." The relied upon section of Higham is directed to data representative of items. The Office misinterprets item data for storage location data. Where does Higham teach or suggest a data store that includes data representative of the drawer location? The Office has not established a *prima facie* showing of obviousness. It would not have been obvious to one having ordinary skill in the art to have modified Bach/Gardner with Higham as alleged to have produced the recited invention.

CONCLUSION

Each of Appellant's claims satisfy the requirements of 35 U.S.C. § 112. Also, as explained above, each of the pending claims specifically recites features and relationships that are neither disclosed nor suggested in the applied art. Furthermore, the applied art is devoid of any such teaching, suggestion, or motivation for combining features of the applied art so as to produce Appellant's invention. For these reasons it is respectfully submitted that all the pending claims are allowable.

Respectfully submitted,



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